

DOCKET FILE COPY ORIGINAL

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 17 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)

Communications Assistance for)
Law Enforcement Act)

CC Docket No. 97-213
DA 99-863

**COMMENTS OF
OMNIPOINT COMMUNICATIONS SERVICES LLC**

Omnipoint Communications Services LLC ("Omnipoint"), by its attorneys, hereby submits its comments in response to the Commission's May 7, 1999 Public Notice in the above-captioned proceeding. Omnipoint and its affiliates are small business licensees operating broadband Personal Communications Services ("PCS") systems in the New York Major Trading Area and many other Basic Trading Areas, and hold PCS licenses to serve approximately 100 million people in the United States. According to U.S. Department of Justice statistics, Omnipoint's service areas include jurisdictions where very high volumes of wiretaps and other forms of electronic surveillance are conducted annually.

Omnipoint has a record of participating actively in the Commission's proceedings involving the Communications Assistance for Law Enforcement Act ("CALEA"). The Commission has in the past recognized Omnipoint's experience and thoughtful contributions by adopting a number of the suggestions contained in Omnipoint's comments. See, e.g., Communications Assistance for Law Enforcement Act, Report and Order, CC Dkt. No. 97-213, ¶¶ 20, 25, 35, 44 (rel. March 15, 1999).

Omnipoint's experience leads it to the conclusion that the limitations the Commission has identified in paragraph 4 of the Notice severely impair the usefulness of the aggregate revenue estimates. No reliable conclusions can be reached from this data.

There Are Other Equipment Manufacturers Who Did Not Submit Revenue Data

Several factors contribute to the conclusion that no reliable use can be made of this data. At the outset, it does not represent the universe of the principal equipment manufacturers. For example, the Commission was unable to secure revenue data from Ericsson and Nokia.

This underrepresentation results in a situation where, at best, extrapolations need to be made from the data. But as explained below, the data collected from the manufacturers that did participate falls short from creating a "best case" situation where reliable extrapolations can be made.

The Revenue Data Collected From The Five Manufacturers Is Not Comparable

The Commission acknowledged that there were deficiencies in the collected data when it stated that "the revenue estimates supplied by the five manufacturers are not completely comparable." Although it is obviously preferable to rely upon data that is "completely comparable," some conclusions can be reached and decisions made based on data that is merely "comparable." Here, however, the revenue estimates developed by the Commission fall far short of this modest standard. When the known differences are examined, it becomes evident that the Commission may have inadvertently understated the nature of the problem. For example, according to the Commission:

- Some vendors based their estimates on a possible government "buyout" plan; others did not.

- Some vendors based their estimates upon the current number of switches in service; others based their estimates upon the number of switches they anticipate will be in service at the time of upgrades.
- Some vendors included revenue estimates for both hardware and software; others included revenue estimates only for software.
- Some vendors supplied revenue estimates for each punch list capability; others did not.
- Some vendors included in their equipment specifications capabilities that the Commission has preliminarily determined are *not* required by CALEA; others failed to include capabilities that the Commission has preliminarily determined *are* required by CALEA.
- Some vendors included revenue estimates for one particular punch list capability under a different capability; others did not.
- Some vendors included a punch list capability under J-STD-025; others did not.

Taken together, these discrepancies strike at the heart of all of the important factors necessary to develop reliable data. They render the data meaningless and undercut any conclusions that may be drawn from it.

To obtain reliable data of the type that private industry relies upon in making important decisions, the Commission at the very least must return to the five manufacturers that submitted data and request them to submit comparable revenue estimates. The fact that the Commission has not issued a final rule specifying the capabilities required by CALEA contributes to the confusion among the manufacturers about the scope of the work they must undertake to develop CALEA-compliant equipment. Requesting comparable data from the manufacturers *after* the Commission has announced its final views identifying the capabilities required by CALEA would help to generate revenue estimates that are more comparable.

Conclusion


As noted, some manufacturers based their estimates on a possible government "buyout" plan whereby the Department of Justice would pay the manufacturers a licensing fee for CALEA-related upgrades for switches and the manufacturers would make those upgrades freely available to wireless and wireline carriers. Omnipoint enthusiastically supports adoption of the government "buyout" approach as the most cost effective means of satisfying CALEA obligations, as finally determined. This direct approach would eliminate significant costs associated with individual carrier negotiation, billing, and other administrative burdens. In addition, this simplified approach further supports application of the "safe harbor" protections embodied in CALEA, see 47 U.S.C. § 1006.

Conclusion

For the foregoing reasons, Omnipoint urges the Commission not to draw any conclusions or make any decisions based on the aggregate revenue estimates contained in the attachment to the May 7, 1999 Notice.

Respectfully submitted,

OMNIPOINT COMMUNICATIONS SERVICES LLC

By: 

Emilio W. Cividanes
Piper & Marbury, L.L.P.
1200 19th Street, N.W.
Washington, D.C. 20036
(202) 861-3900

Its Attorneys

Date: May 17, 1999